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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**Identifying data deleted to
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invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536

MAY 14 2003

FILE: [REDACTED]

Office: HARLINGEN, TEXAS

Date:

IN RE: Applicant: [REDACTED]

APPLICATION:

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under sections 212(a)(9)(B) and 212(a)(6)(C) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B) and 1182(a)(6)(C).

ON BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (I-212 Application) was denied by the District Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the district director's decision will be withdrawn. The I-212 application is moot, as there is insufficient evidence to establish that the applicant was in immigration proceedings in the past, or that she was ordered removed or deported from the United States.

The record contains the applicant's I-212 application indicating that she is a native and citizen of Mexico who was arrested and deported from the United States on February 12, 1997. The record reflects that on January 22, 1997, the applicant was apprehended by the Immigration and Naturalization Service ("Service" now known as the Bureau of Citizenship and Immigration Services) while attempting to enter the U.S. with fraudulent documents. The record reflects further that on January 22, 1997, the applicant was found guilty in the U.S. District Court, McAllen, Texas, of violating 8 U.S.C. § 1325(a)(3) for:

Knowingly, willfully and in violation of law attempt[ing] to gain illegal entry into the United States by presenting a counterfeit resident alien card at the Port of Entry at Hidalgo, Texas.

The record additionally reflects that on January 27, 1997, the applicant voluntarily departed the United States after withdrawing her application for admission into the U.S. and waiving her right to an exclusion hearing before an Immigration Judge.

In a decision dated July 8, 2002, the district director found that the applicant had been deported from the United States through Brownsville, Texas on February 12, 1997. The district director's decision found further that the applicant had been residing in the U.S. since November 22, 2000, in violation of a 5-year ban on reentry after removal or deportation. The district director's decision concluded that the applicant failed to establish that she merited a grant of her I-212 application. The application was denied accordingly. See *District Director Decision*, dated July 8, 2002.

Presumably, the information in the district director's decision regarding the applicant's February 12, 1997, deportation from the United States, was obtained from the I-212 application filed by the applicant. Question #7 of the I-212 application states, "circumstances under which deported or removed from the United States." In response, the applicant checked a box stating, "arrested and deported (less than five years ago)." In addition, questions #13 and #14 of the I-212 application ask for the date of deportation or removal and the port of departure from the United States. In response, the applicant stated that she was

deported or removed from the U.S. on February 12, 1997, and that her port of departure was Brownsville, Texas. See *I-212 Application*, filed November 22, 2000. Despite the applicant's responses on her I-212 application, however, a review of the record reflects no evidence to indicate that the applicant was ever in immigration proceedings or that she departed the United States after being ordered deported or removed by an immigration judge. Instead, the evidence indicates that the applicant withdrew her application for admission, waived her right to an immigration court hearing and departed the U.S. voluntarily on January 27, 1997.

Based on the evidence in the record, the district director erred in finding that the applicant was previously removed or deported from the United States and that she was subject to a five-year ban on reentering the U.S. Moreover, the district director's adjudication of the applicant's I-212 application for permission to reapply for admission into the United States after deportation or removal was erroneous since, based on the evidence, the applicant was not required to file the application.

In spite of the above error, however, it is noted that the applicant appears to be inadmissible to the United States pursuant to sections 212(a)(6)(C) and 212(a)(9)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C) and 1182(a)(9)(B).

Section 212(a)(6)(C) of the Act states, in pertinent part, that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(a)(9)(B) states in pertinent part, that:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who -

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(II) Has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

A waiver is available for each of the above grounds of inadmissibility under section 212(i) of the Act which states:

(1) The Attorney General may . . . waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or

daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien

In addition, section 212(a)(9)(B)(v) states:

(v) Waiver. - The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

Relevant factors in determining whether an alien has established extreme hardship include:

[T]he presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999).

Based on the evidence in the record, it is noted that the applicant is married to a U.S. citizen and she would thus be eligible to apply for a waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act.

ORDER: The appeal will be rejected, and the district director's decision will be withdrawn.